

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC WOODBERRY,

Defendant.

No. CR18-049RAJ

ORDER DENYING DEFENDANT
WOODBERRY'S MOTION TO
EXCLUDE CO-DEFENDANT'S
ACCUSATORY STATEMENT

THIS MATTER has come before the Court upon Defendant Eric Woodberry's Motion to Exclude Co-Defendant's Accusatory Statement (Dkt. #67). Having considered the motion, the government's response (Dkt. #90), and the files and pleadings herein, the Court makes the following findings:

A. Confrontation Challenge.

Defendant Woodberry has moved to exclude an alleged statement by co-defendant Bradford Marselas Johnson, "We've done this before." The facts surrounding the circumstances of this statement being made are essentially undisputed. During the course of the robbery, Defendant Johnson told at least one of the store employees, "We've done

1 this before,” or words to that effect. This statement was made as store employees were
2 forced to the ground at gunpoint.

3 Defendant Woodberry argues the admission of this statement would violate the
4 Confrontation Clause and *Bruton v. United States*, 391 U.S. 123 (1968). The Court
5 disagrees.

6 The Confrontation Clause and *Bruton* are only implicated when a co-defendant’s
7 testimonial statement is admitted at trial. Statements are testimonial when they result
8 from questioning, “the primary purpose of [which was] to establish or prove past events
9 potentially relevant to later criminal prosecution.” *Davis v. Washington*, 547 U.S. 813,
10 822 (2006). “To determine . . . the primary purpose” of a statement, “we objectively
11 evaluate the circumstances in which the encounter occurs and the statements and actions
12 of the parties.” *Michigan v. Bryant*, 562 U.S. 344, 359 (2011).

14 The statement allegedly made by Johnson was not testimonial under any realistic
15 understanding of that term. The statement was made during the course of a crime, and if
16 introduced at trial would not violate *Bruton*. See *Lucero v. Holland*, 902 F.3d. 979 (9th
17 Cir. 2018), *cert. denied*, 2019 WL 659944 (Feb. 19, 2019).

18 The primary purpose of the statement was not that it be used in any future
19 prosecution or to establish or prove some fact in trial. The clear primary purpose of the
20 statement was to force activity by the store employees during the course of criminal
21 activity, not for it to be used in a subsequent criminal prosecution. Hence, there is no
22 constitutional violation with the admission of Johnson’s statement.
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1 **B. Admissibility Pursuant to Evidence Rule 801(d)(2)(E).**

2 Federal Rule of Evidence 801(d)(2)(E) permits the admission of co-conspirator
3 statements made during the course of and in furtherance of a conspiracy. The
4 government accurately cites the requirements for admission of such statements.
5 Dkt. #85, p. 7.

6 The Court will permit the government to establish the requirements for admission
7 of the statements. Accordingly, once established, the statements will be admissible
8 against both defendants.

9 For these reasons, Defendant Woodberry's Motion to Exclude Co-Defendant's
10 Accusatory Statement (Dkt. #67) is **DENIED**.

11 DATED this 12th day of April, 2019.

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14 The Honorable Richard A. Jones
15 United States District Judge
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